IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Bail Appl..No. 7480 of 2007()

CRIME NO. 931/07 OF ADOOR POLICE STATION

PETITIONER : ACCUSED NO.3:

ROBIN, AGED 23 YEARS, S/O.BABU GEORGE,
KALLUVILAYIL, PARAKKODE, ADOOR.

BY ADV. SRI. K.SHAJ
SRI.SAJJU.S
SRI.B.BALRAJ

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7480 of 2007

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Dated this the 12th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered, inter alia, under Section 326 I.P.C. The alleged incident took place on 3.11.2007 at 8 p.m. On account of animosity which arose from an incident immediately prior to the incident in this case, the accused persons, three in number, allegedly attacked the defacto complainant with dangerous iron and wooden sticks and allegedly caused injuries, including a fracture to the defacto complainant. A prompt F.I. statement has been lodged. Investigation is in progress. The petitioner, who is the third accused, faces the prospect of imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. In fact the incident did not take place in the manner alleged by the defacto complainant. The petitioner and the co-accused are not aggressors, but only victims

of aggression. They were attacked and an amount of Rs.800/- which was available with the first accused was taken away by force by the defacto complainant. To cover up his involvement in that culpable offence, false allegations have been raised by the defacto complainant now. The petitioner may be granted anticipatory on bail, it is prayed. The first accused is a juvenile and he has already been released on bail, it is submitted.

3. The learned Prosecutor opposes the application. He submits that it is true that on the next day after the incident, the first accused had got himself admitted in the hospital and had raised allegations against the defacto complainant in this case. On that allegation a crime has been registered alleging the offence punishable under Section 392 r/w. 34 I.P.C. The learned Prosecutor submits that the said crime was registered only on 5.11.2007. The learned Prosecutor further points out that the first accused had gone to the doctor only on the next morning after the incident. In any view of the matter, the petitioner does not deserve to be granted anticipatory bail. In a serious crime like this, the Investigator may be granted the opportunity to arrest the

petitioner to interrogate him in custody, effect recoveries, if any and also to ascertain the entire gamut of facts.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. The mere fact that a counter case has been registered, is not, according to me, a sufficient reason to concede to the petitioner anticipatory bail. Considering the nature and circumstances of the case, the nature of the injuries suffered, the nature of the allegations raised in the counter case and the stage of the investigation, I am not persuaded to invoke the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must be directed to appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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